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ADMINISTRATIVE HEARING
COMMISSION

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

W. DALE FINKE, Director
Department of Insurance
State of Missouri,

Petitioner,

vs.

JOSEPH E. WARDEN,

Respondent.

Serve at:
7334 Berkley Square South
New Albany, Ohio 43054-8865
Phone #: (614) 775-1371

Case No.: Ob-06022380

COMPLAINT

W. Dale Finke, Director of the Missouri Department of Insurance, through counsel, complains and requests the Administrative Hearing Commission find that cause exists for disciplinary action against Respondent, Joseph E. Warden because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Missouri Department of Insurance ("the Director"), whose duties include, pursuant to RSMo Chapters 374 and 375, the regulation, supervision, and discipline of licensed insurance producers.

2. The Missouri Department of Insurance issued a producer license to Respondent on June 20, 2000 (license # PR113017). Respondent's producer license expired on June 20, 2006.

3. The Commission has jurisdiction over this Complaint pursuant to § 621.045 RSMo (Cum. Supp. 2005).

COUNT I

4. While an officer of an insurance company formed under the laws of this state, Respondent directly or indirectly used or employed, or permitted others to use or employ, money, funds, or securities of the company for private profit or gain, a violation of § 375.390 RSMo (2000), thus, a ground for discipline of Respondent's insurance license pursuant to § 375.141.1(2) RSMo (Cum. Supp. 2005).

5. The facts are as follows:

- a. Respondent began working for Capital Reserve Life Insurance Company (hereafter "Capital Reserve") on or about September 3, 1995. Respondent acted as President and Chief Executive Officer of Capital Reserve from on or about November 11, 1999 until he was suspended as President and Chief Executive Officer by the Capital Reserve Board of Directors on or about September 6, 2005. Respondent resigned as President and Chief Executive Officer of Capital Reserve on or about September 12, 2005; and,
- b. Respondent's spouse, Linda Warden, began working for Capital Reserve on or about October 16, 2000, until she was terminated by the Capital Reserve Board of Directors on September 12, 2005; and,
- c. On or about January 1, 2002, Respondent instituted a revised employee health insurance policy which provided for employee reimbursement for out-of-pocket medical expenses; and,
- d. In 2005, an outside firm audited Capital Reserve; and,

- e. During the audit, the audit firm noticed discrepancies notified the Missouri Department of Insurance (hereafter "MDI"), Division of Financial Regulation; and,
- f. The Division of Financial Regulation scheduled a financial examination, which commenced on or about August 8, 2005 and concluded on or about November 3, 2005; and,
- g. During the financial exam, MDI examiners discovered nearly six hundred thousand dollars (\$600,000) in medical and dental reimbursements paid by Capital Reserve to Respondent or Linda Warden; and,
- h. Respondent and Linda Warden submitted reimbursement requests for alleged out-of-pocket medical and dental expenses that were not covered by their employee insurance plan; and,
- i. Capital Reserve reimbursed Respondent and Linda Warden for the alleged out-of-pocket medical and dental expenses; and,
- j. The total amount of reimbursements paid by Capital Reserve to Respondent and Linda Warden for care allegedly provided by Boone Hospital is four hundred eighty-three thousand, nine hundred forty-one dollars and thirty-six cents (\$483, 941.36); and,
- k. The total amount of reimbursements paid by Capital Reserve to Respondent and Linda Warden for dental care allegedly provided to Respondent and Linda Warden is eighty-seven thousand, two hundred thirty-five dollars (\$87,235); and,

- l. Capital Reserve paid Respondent and Linda Warden a total of five hundred seventy-one thousand, one hundred seventy-six dollars and thirty-six cents (\$571,176.36) as reimbursed medical and dental expenses; and,
- m. Capital Reserve records indicate that Respondent and Linda Warden were paid three hundred fifty-four thousand, five hundred seventy-two dollars and seventy-five cents (\$354,572.75) as reimbursement for medical services allegedly provided by Boone Hospital in 2004, and one hundred twenty-nine thousand, three hundred sixty-eight dollars and sixty-four cents (\$129,368.64) as reimbursement for medical services allegedly provided by Boone Hospital in 2005; and,
- n. MDI contacted Boone Hospital to verify charges to Respondent and Linda Warden in 2004 and 2005. Boone Hospital was unable to verify many of the charges; and,
- o. MDI investigators found Respondent and Linda Warden requested and received reimbursement in 2004 and 2005 for medical care and services that were never provided by Boone Hospital; and,
- p. On or about September 16, 2005, during an informal interview, Respondent alleged that Linda Warden falsified documents to obtain reimbursements from Capital Reserve; and,
- q. On or about February 9, 2006, Dana Whaley, Internet Investigator with MDI, led a conference with Tony Hutchinson and Beverly Gregory, employees of Capital Reserve. Mr. Hutchinson is the Controller and a Board Member of

Capital Reserve. Ms. Gregory is the Human Resource Director at Capital Reserve; and,

- r. During the conference, Mr. Hutchinson and Ms. Gregory verified that Respondent personally requested reimbursements for his own expenses and signed for some of the reimbursements; and,
- s. Reimbursement checks issued by Capital Reserve were deposited into the personal joint bank account of Respondent and Linda Warden; and,
- t. As of the date of this petition, Respondent has not repaid the questionable reimbursements to Capital Reserve.

6. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1(2) RSMo (Cum. Supp. 2005).

COUNT II

7. Respondent used as genuine, possessed for the purpose of using as genuine, or transferred with the knowledge or belief that it would be used as genuine, any writing which the Respondent knew had been made or altered in fraudulent manner with the purpose to defraud an insurance company, a violation of § 570.090.1(4) RSMo (Cum. Supp. 2005), thus, a ground for discipline under § 375.141.1(2) RSMo (Cum. Supp. 2005).

8. The facts are as follows:

- a. Petitioner realleges and expressly incorporates the allegations in paragraphs 1 through 6.

9. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1(2) RSMo (Cum. Supp. 2005).

COUNT III

10. Respondent improperly withheld, misappropriated, or converted moneys or properties received in the course of doing insurance business, a ground for disciplining Respondent's insurance license pursuant to § 375.141.1(4) RSMo (Cum. Supp. 2005).

11. The facts are as follows:

a. Petitioner realleges and expressly incorporates the allegations in paragraphs 1 through 9.

12. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1 (4) RSMo (Cum. Supp. 2005).

COUNT IV

13. Respondent admitted to having committed insurance fraud, a ground for disciplining Respondent's insurance license pursuant to § 375.141.1(7) RSMo (Cum. Supp. 2005).

14. The facts are as follows:

a. Petitioner realleges and expressly incorporates the allegations in paragraphs 1 through 12.

15. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1 (7) RSMo (Cum. Supp. 2005).

COUNT V

16. Respondent used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, a ground for disciplining Respondent's insurance license pursuant to § 375.141.1(8) RSMo (Cum. Supp. 2005).

17. The facts are as follows:

a. Petitioner realleges and expressly incorporates the allegations in paragraphs 1 through 15.

18. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1 (8) RSMo (Cum. Supp. 2005).

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent's insurance producer license under §§ 375.141.1(2), (4), (7), and (8) RSMo (Cum. Supp. 2005).

Respectfully submitted,



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